IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

RSA.No. 742 of 2007()

AS.15/2002 of PRL.SUB COURT.,THALASSERY
OS.317/1996 of MUNSIF COURT, KUTHUPARAMBA

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APPELLANT/RESPONDENT/DEFENDANT

MANATHAN LAKSHMANAN, S/O. KANNAN,
AGED 45 YEARS, BUSINESS, PAYAM AMSOM AND DESOM,
IRITTY P.O., THALASSERY TALUK.

BY ADV. SRI.K.V.PAVITHRAN

RESPONDENTS: APPELLANT/PLAINTIFF

MAILAPRAVAN VENUGOPALAN, S/O. KUNHAMBU
NAMBIAR, AGED 50 YEARS, AGRICULTURIST,
PAYAM AMSOM, THALASSERI TALUK.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J

R.S.A 742/2007

Dated this the 8th day of October, 2007

JUDGMENT

Defendant in O.S.317/1996 on the file of the Munsiff Court, Kuthuparamba is the appellant. Plaintiff is the respondent. As per agreement entered into between the appellant and respondent, appellant was permitted to tap the rubber trees belonging to the respondent for a period of three years commencing from 1.1.1994, for a total consideration of Rs.31,000/-. Contending that appellant has tapped the rubber trees in an improper manner causing damages to the trees and inspite of information, appellant has not corrected the improper tapping a suit for injunction was filed by the respondent seeking a decree to restrain tapping of rubber trees in an improper way on committing waste and damages to the rubber trees. Appellant in his written statement denied that allegations and contended that they are getting the trees tapped by one Ravindran who had undergone training at the Rubber Board and no damages had been caused to the trees. It was also contended that because of

timely maintenance by the appellant yield has started increasing and due to that respondent is causing obstruction to the tapping and he has no right to do so. Appellant raised a counter claim claiming damages of Rs.32,000/- contending that because of the obstruction caused by the respondent he could not tap the rubber trees for 70 days and respondent is liable to pay the damages. In the suit a Receiver was appointed. The Receiver had collected the yield and deposited Rs.11,216/- as the income. As the period provided in the agreement expired, respondent did not press the claim for injunction. Learned Munsiff on the evidence of PW1, Dws 1 to 3, CW1 and Exts.A1 to A3, B1 to B3 and C1 to C5 dismissed the suit and granted a decree as sought for in the counter claim and directed respondent to pay of Rs.32,000/- as damages. Respondent challenged the judgment before Sub Court in A.S.15 of 2002. Learned Sub Judge on re-appreciation of evidence found that Ext.C5 report of the Commissioner establish that appellant was tapping the rubber trees in an improper way and as a result there were irregular growth of warts

in 40 rubber trees. It was also found and there were ditches on the trees due to the improper tapping causing damage to the trees. Learned Munsiff also found that the Commissioner could notice a brown bast disease in 20 rubber trees. Commissioner also reported that when the neighbouring rubber estate was examined, such defects or damages were not found in those trees indicating that the damages were caused by improper tapping. Learned Sub Judge on this evidence found that, in the circumstances of the case, appellant is not entitled to get damages, except the amount already deposited in Court by the Receiver. Decree is therefore modified to Rs.11,216/-, the amount deposited by the Receiver in Court. It is challenged in this appeal.

2. Learned counsel appearing for the appellant vehemently argued that suit was only for injunction and as there was no claim for compensation or damages raised by respondent/plaintiff, Court is not called upon to decide whether any damage was caused to the rubber trees and in any case on the evidence of the Commissioner first appellate Court should not have

found that appellant is not entitled for the damages granted by the trial Court.

3. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. Though respondent filed a suit only for injunction restraining appellant from tapping rubber trees in an improper and careless manner so as to cause damages to the trees and as the period fixed under the agreement enabling appellant to tap the trees expired, the prayer was not pressed, it was this specific case of respondent that appellant caused damages to the trees by the improper tapping. Evidence was also let in to establish it. Appellant in his written statement raised a counter claim contending that because of the obstruction caused by the respondent and by filing the suit, he lost 70 days of tapping and sustained a total loss of Rs.32,000/-. Receiver who was appointed in the suit to take the yield deposited Rs.11,216/- the income collected by him by tapping the rubber trees. The question is in such circumstances, whether appellant is entitled to claim damages over and above the amount deposited by the

Receiver when evidence establish that due to the improper tapping of rubber trees, appellant caused damages to many of the rubber trees. The factual finding of the first appellate Court was that damages were caused to several trees. In such circumstances, as rightly found by the first appellate Court, when evidence establish that appellant was tapping rubber trees in an improper manner and caused damages to the trees, he is not entitled to claim damages except the yield deposited in Court. As there is no substantial question of law involved in the appeal, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
Judge

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